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In the Supreme Court of the United States

OCTOBER TERM, 1975

RODOLFO SIFUENTES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the court of appeals (A. 58) is not reported. Its order of affirmance is noted at 517 F. 2d 1402. The opinion of the district court (A. 31–32) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 1975. The petition for a writ of certiorari was filed on September 4, 1975, and was granted on November 11, 1975 (A. 59). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Border Patrol officers may lawfully stop northbound vehicles at a fixed immigration checkpoint in the Mexican border area in order to make routine inquiries concerning the nationality and immigration status of the occupants of the vehicles.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted on four counts of transporting aliens who were present in this country unlawfully, in violation of 8 U.S.C. 1324(a)(2). He was sentenced to concurrent terms of two years' imprisonment on counts 1 and 2, with all but six months of the sentence suspended in favor of three years' probation. In addition, he was sentenced to concurrent terms of two years' imprisonment on counts 3 and 4, to run consecutively with the sentences imposed on counts 1 and 2; the sentences on counts 3 and 4, however, were suspended

in favor of three years' probation (A. 54–55). The court of appeals affirmed (A. 58).

1. The evidence at petitioner's trial[1] established that the vehicle he was driving was stopped at a permanent immigration traffic checkpoint near Sarita, Texas, at about 3:00 a.m. on April 28, 1974, as he was traveling north on U.S. Highway 77 about 65–90 miles north of the Mexican border (A. 11–13, 15–16). When Border Patrol Agent Gustavo DeLeon approached petitioner's vehicle, petitioner called out, "Hi, Champion" (A. 13, 24). Champion was the name of another agent assigned to the area (A. 23). Agent DeLeon replied that he was not Champion, informed petitioner that he was conducting an immigration inspection, and asked petitioner if he was a citizen of the United States (A. 13). Petitioner responded that he was a citizen and that he was from Weslaco, Texas (*ibid.*).

At about that time, Agent DeLeon observed four other persons in the vehicle, one in the front seat and three in the rear, who were slumped down in the seats as if asleep (A. 13, 17, 22–24). Upon questioning, the four passengers stated that they were Mexican citizens, and the officer determined that they had no documentation authorizing them to be in this country (A. 13–14). Petitioner and the four aliens were then taken into custody (A. 13–14, 17–18).

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[1] No separate hearing was held on petitioner's pre-trial motion to suppress the evidence derived from the stop of his vehicle. The court reserved ruling on the motion until evidence relating to the stop of the vehicle was presented at trial (A. 9–11).

The four aliens who were apprehended testified at the trial that, in accordance with prior arrangements, petitioner picked them up and transported them north after they had illegally crossed the border by swimming the Rio Grande River (Tr. 43–145).[2]

2. Highway 77 originates in Brownsville at the Mexican border and is one of two major arteries leading north out of the lower Rio Grande valley (A. 12, 18–19). The checkpoint is marked by appropriate signs and warning lights and is illuminated by floodlights during hours of darkness (A. 12, 16–17). A permanent sign, about one-half mile to the south of the checkpoint, warns northbound motorists to slow down (A. 12). Approximately 260 yards south of the checkpoint is a sign with a flashing amber light indicating that motorists must stop ahead (A. 12, 16). At the checkpoint itself is a sign marked "Stop, U.S. Officers," with a red flashing light atop (A. 12, 16–17). Cones are placed in the road to aid traffic control (A. 16–17).[3]

The facility is operated 24 hours a day, except when inclement weather or manpower shortages require its closing (A. 12, 15). The officers on duty customarily stop all northbound vehicles except those whose occupants the officers recognize as local inhabitants of the area (A. 12, 16, 26). That was the procedure the officers were following when petitioner's vehicle was stopped (A. 16).

[2] The question whether such voluntary testimony of a witness at trial is properly subject to suppression as the fruit of an allegedly illegal stop was not raised in the courts below, and we do not raise it here.

[3] For the Court's convenience, we have reproduced in the appendix to this brief, *infra*, p. 1a, an official Border Patrol photograph of the Sarita checkpoint.

3. At the close of the government's case, the district court orally denied petitioner's motion to suppress, stating that a written opinion would follow (A. 28–29). The motion was renewed and denied again at the close of all the evidence (A. 29–30).

The district court subsequently filed a written memorandum denying the motion to suppress (A. 31–32), relying on its previous opinion in *United States* v. *Fuentes*, 379 F. Supp. 1145, affirmed, 517 F. 2d 1401 (A. 33–46). In *Fuentes*, the district court ruled that the immigration checkpoint near LaGloria, Texas, was the "functional equivalent of the border" (A. 37) and that the Border Patrol could accordingly conduct routine stops of vehicles there without violating the Fourth Amendment. The court in *Fuentes* also concluded that the same rationale could be applied to the Sarita checkpoint (A. 34).

On appeal in the present case, the court of appeals affirmed summarily on the authority of its decision in *United States* v. *Santibanez*, 517 F. 2d 922, which upheld the validity of a routine, warrantless stop of a vehicle at an immigration checkpoint for the purpose of inquiring about the occupant's citizenship and immigration status. Noting that the lawfulness of checkpoint stops was reserved by this Court in *United States* v. *Ortiz*, 422 U.S. 891, 897, n. 3, the court in *Santibanez* held (517 F. 2d at 923):

> We find no constitutional dereliction in stoping vehicles at this permanent checkpoint for the purpose of determining the occupant's citi-

zenship. Such a stop is considerably less intrusive than a search * * *.

After this Court granted the petition for a writ of certiorari in *United States* v. *Martinez-Fuerte*, No. 74–1560—which involves the lawfulness of checkpoint stops conducted pursuant to a judicial warrant—we filed a memorandum suggesting that it would be appropriate to grant the petition in the present case as well, since it squarely presents the question whether such stops may properly be made in the absence of a warrant. The Court granted the petition and set the case for oral argument in tandem with *Martinez-Fuerte* (A. 59).

ARGUMENT

THE STOP OF PETITIONER'S VEHICLE AND THE BRIEF INQUIRIES CONCERNING THE OCCUPANTS' NATIONALITY AND IMMIGRATION STATUS WERE REASONABLE UNDER THE FOURTH AMENDMENT

The checkpoint stop and inquiry procedure followed by the Border Patrol officers in this case, like the roving patrol stop and inquiry in *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 878, "involve[d] only a brief detention short of traditional arrest." Its constitutional validity accordingly must be tested under "the reasonableness requirement of the Fourth Amendment" (*id.* at 882), which in turn "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers" (*id.* at 878). The Court's view of that balance in *Brignoni-Ponce* led it to conclude that officers on roving patrol may stop vehicles to

inquire about the occupants' citizenship and immigration status "only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country" (*id.* at 884).

We have argued in our brief in *United States* v. *Martinez-Fuerte*, No. 74–1560, that the reasonableness balance shifts in the context of checkpoint stops, because the law enforcement need to conduct routine stops and inquiries at checkpoints is substantially greater, and the intrusions upon protected Fourth Amendment interests are substantially reduced.[4] Although the stops in *Martinez-Fuerte*, unlike the stop in the present case, were authorized by a judicial warrant issued on a showing of area-type probable cause, our threshold argument in that case is that the stops were reasonable without regard to the warrant (Br. 16–42).

Rather than repeating that argument, we rely here on our brief in *Martinez-Fuerte* and limit ourselves to the following additional observations in response to petitioner's contentions.

1. Petitioner's argument rests on a grossly inflated characterization of the intrusion occasioned by the checkpoint stop and inquiry procedure. If, as this Court stated in *Brignoni-Ponce*, "the interference

[4] Our brief in *Martinez-Fuerte* (together with our briefs in *Brignoni-Ponce* and *United States* v. *Ortiz*, 422 U.S. 891) were served on counsel for petitioner in this case, and petitioner's brief responds to some of our arguments in *Martinez-Fuerte* (see, *e.g.*, Pet. Br. 28, 37 n. 21, 45 n. 33).

with individual liberty that results when an officer [on roving patrol] stops an automobile and questions its occupants" may fairly be described as "modest" and "limited" (422 U.S. at 879–880, 883), it is difficult to understand why a stop and inquiry at a checkpoint results in a "massive" invasion (Pet. Br. 32) of the traveler's "right to free passage and movement" as well as his "right of personal secrecy and privacy" (Pet. Br. 31).

As we argued in *Martinez-Fuerte* (Br. 28–33), the brief interruption in travel caused by a checkpoint stop is little more intrusive than the interruption caused by a traffic light or stop sign. Motorists are not pursued by a patrol car with flashing lights and siren. There is no search of the vehicle or its occupants. Contrary to petitioner's assertion, the motorist is not ordinarily subjected to "a barrage of rather personal verbal probes" (Br. 32).[5]

Nor does the motorist suffer any substantial invasion of privacy when the officer looks into the car through the passenger compartment's windows, for

[5] Petitioner asserts that, although a checkpoint stop may be less frightening to a motorist than a roving patrol stop, "it is also considerably more dangerous" (Br. 32). "[I]t is certain to be only a matter of time," petitioner says, "until a drunk barrels into a checkpoint, scattering cars and agents like tenpins" (Br. 33). Petitioner's speculative claim is unfounded. As the court in *United States* v. *Baca*, 368 F. Supp. 398 (S.D. Cal.), correctly found, safety is one of the "primary factors in selecting a checkpoint site" (*id.* at 406). A suitable location requires "an unobstructed view of oncoming traffic, to provide a safe distance for slowing and stopping; parking space off the highway; power source to illuminate control signs and inspection area, and bypass capability for vehicles not requiring examination" (*ibid.*; emphasis omitted).

"the visual inspection is limited to those parts of the vehicle that can be seen by anyone standing alongside" (*United States* v. *Brignoni-Ponce, supra,* 422 U.S. at 880). As four members of this Court stated in *Cardwell* v. *Lewis,* 417 U.S. 583, 590:

> One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public throughfares where both its occupants and its contents are in plain view.

2. Petitioner argues (Br. 35–37) that checkpoint operations discriminate against persons of Mexican ancestry or appearance. But even at those checkpoints where only a small proportion of the passing vehicles is subject to the stop and inquiry procedure, the officers do not select vehicles for a stop and inquiry on the basis of the skin color or ethnic characteristics of the occupants (see our reply brief in *Ortiz,* No. 73–2050, at pp. 10–14). Petitioner's groundless charge of discrimination is particularly inappropriate with respect to the Sarita checkpoint involved here, for the record shows that the officers there ordinarily stop all vehicles (apart from those containing local inhabitants) and were following that procedure at the time petitioner was stopped (A. 12, 16, 26).[6]

[6] It follows that the officers at the Sarita checkpoint exercise substantially less discretion in selecting vehicles for a stop and inquiry than do their counterparts at the San Clemente checkpoint, where the volume of traffic forecloses the stopping of every vehicle (see our brief in *Martinez-Fuerte*, pp. 32–33).

3. Petitioner contends (Br. 38–40) that the large number of illegal entrants in this country demonstrates the inefficiency of the traffic checkpoints. But the fact that millions of illegal immigrants may have evaded apprehension does not contradict the overwhelming evidence that the Border Patrol's traffic checkpoints are highly effective in deterring millions of others from entering this country unlawfully. The district court in this case incorporated (A. 32) its finding in *United States* v. *Fuentes, supra,* 379 F. Supp. at 1149 (A. 38), that "it is the existence of the checkpoints that keeps the flow [of illegal entrants] at a manageable level." See also *United States* v. *Baca,* 368 F. Supp. 398, 407 (S.D. Cal.).

Petitioner also argues that there are practical alternatives to the use of checkpoints (Br. 41–45). His assertion that "with sufficient money, men and materials, the Mexican border can be substantially sealed at the physical boundary by the 'line watch'" (Br. 41), and his contention that a law proscribing the employment of illegal aliens would obviate the need for checkpoints (Br. 43), are answered in our brief in *Martinez-Fuerte,* pp. 26–27. Whatever may be the utility of petitioner's additional suggestions—offering a $500 bounty for information leading to the apprehension of each illegal entrant (Br. 42) and authorizing the seizure and forfeiture of vehicles used to transport aliens (Br. 43–44)—we doubt that either

would significantly diminish the need for the authority to make brief stops and inquiries at checkpoints that Congress has conferred.

4. Petitioner argues that approval of the checkpoint stop and inquiry procedure used here could lead to Internal Revenue Service checkpoints in large metropolitan areas to ask motorists whether they have filed federal income tax returns, or to local police checkpoints on sidewalks to ask passersby whether they are prostitutes (Br. 47). Neither situation would be remotely comparable to the immigration traffic checkpoints. A holding that the stop of petitioner's vehicle was reasonable under the Fourth Amendment need not imply that any checkpoint stop and inquiry, wherever conducted and whatever its purpose, would also be reasonable.

The Border Patrol's checkpoint operations, unlike the operations hypothesized by petitioner, "are incidental to the protection of the border and draw a large measure of justification from the Government's extraordinary responsibilities and powers with respect to the border" (*Almeida-Sanchez* v. *United States,* 413 U.S. 266, 279, Mr. Justice Powell concurring). That "other police organizations" might seek uncritically to extend the principles justifying the Border Patrol's stop and inquiry procedure to dissimilar situations (Pet. Br. 48) is not a reason to hold that the stop of petitioner's vehicle violated the Fourth Amendment.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

United States Border Patrol Checkpoint – U.S. Highway 77, 12 miles south of Sarita, Texas

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